

officer and employee of the Corporation dealing with record requests is directed to cooperate to the end of making records available to the public promptly, consistent with this policy.

(b) A requested record of the Corporation may be withheld from disclosure if it comes within one or more of the exemptions in 5 U.S.C. 552(b) or is otherwise exempted by law.

(c) In the event one or more of the exemptions applies to a record, any reasonably segregable portion of the record will be made available to the requesting person after deletion of the exempt portions.

(d) These procedures apply only to records in existence at the time of a request. The Corporation has no obligation to create a record solely for the purpose of making it available under the FOIA.

[47 FR 17822, Apr. 26, 1982. Redesignated at 49 FR 24378, June 13, 1984 and amended at 52 FR 15321, Apr. 28, 1987]

§ 701.4 Availability of records on request.

(a) Each person desiring access to a record or to have a copy of a record pursuant to the Freedom of Information Act shall comply with the following provisions:

(1) The request for the record shall be in writing.

(2) The request shall indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent shall be prominently marked with the symbol "FOIA".

(4) The request shall be addressed to the Freedom of Information Officer, National Railroad Passenger Corporation, 400 North Capitol Street, NW., Washington, DC 20001.

(b) If the requirements of paragraph (a) of this section are not met, the ten (10) day time limit described in § 701.5 will not begin to run until the request has been identified by an employee of the Corporation as a request under the Freedom of Information Act and has been received by the Corporate Communications Department.

(c) Each request should describe the particular record or records desired. To the extent practicable, the request should specify such features as the sub-

ject matter of the record, the date when it was made, the place where it was made and the person or office that made it. Generally, a request will be acceptable if it identifies a record with sufficient particularity to enable an employee of the Corporation to locate the record with a reasonable amount of effort. If the description is insufficient to permit location of a record, the Freedom of Information Officer will notify the requester and indicate the additional kinds of data which will facilitate the search.

(d) The submission of a FOIA request constitutes an agreement by the requester to pay the fees specified in § 701.7 unless the requester is entitled to a fee waiver or specifies in the request a different amount to which the Corporation agrees in writing.

(e) Searches will be made for requested records in order of receipt. Each so-called "continuing request" will be treated as a one-time request.

[47 FR 17822, Apr. 26, 1982. Redesignated at 49 FR 24378, June 13, 1984 and amended at 52 FR 15321, Apr. 28, 1987]

§ 701.5 Time limits.

(a) An initial determination whether to release records requested under this part shall be made within ten (10) days (excepting Saturdays, Sundays, and legal public holidays) after the request is received, except that this time limit may be extended by up to ten (10) working days in accordance with paragraph (c) of this section. The person making the request will be given prompt notice of any extension of time. If a determination is made to release a requested record, the record shall be made promptly available. If the determination is to decline to disclose the record, the person making the request shall, at the same time he is notified of such determination, be notified of:

(1) The reason for the determination; including citation of the relevant exemption relied on for denial;

(2) The right of the requester to appeal the determination; and

(3) The name and title or position of each person responsible for denial of the request.

(b) A determination with respect to an appeal made pursuant to § 701.6 shall

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be made within twenty (20) days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended by up to ten (10) working days in accordance with paragraph (c) of this section. The person making the request will be notified promptly if the time is extended.

(c) In unusual circumstances the time limits prescribed in this section may be extended by written notice to the person making a request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice shall not specify a date that would result in a cumulative extension of more than ten (10) working days. As used in this subsection, "unusual circumstances" means, but only to the extent reasonably necessary for the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another entity having a substantial interest in the determination of the request or among two or more components of an entity having substantial subject matter interest therein.

§ 701.6 Appeals from denials of records or setting of fees.

Each denial decision will set forth the reasons therefor and state the appeal from that decision that is available to the requester. A decision denying access to a document or setting fees may be appealed to the President of the Corporation by filing with his office a written notice of appeal, within thirty (30) days after the date of the denial, specifying the relevant facts and the basis for appeal. If the President denies the appeal, the denial shall set forth the reasons therefor and notify the requester of the provision for judi-

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cial review contained in 5 U.S.C. 552(a)(4)(B).

§ 701.7 Fees.

(a) *Categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall begin upon receipt of a proper request by the Freedom of Information Office which reasonably describes the records sought and which identifies the specific category of the requester. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories.

(1) *Commercial use requester.* When records are requested for commercial use, the fee policy of NRPC is to levy full allowable direct costs for search, review for release, and duplication of records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents nor waiver or reduction of fees based on an assertion that disclosure would be in the public interest. Commercial use is defined as use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, NRPC shall first look to the use to which a requester will put the documents requested. Where a requester does not explain the use or where explanation is insufficient, NRPC may draw reasonable inferences from the requester's identity and charge fees accordingly.

(2) *Representatives of the news media.* When records are requested by representatives of the news media, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. The term "representatives of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations